No. 20170447-SC

IN THE
SUPREME COURT OF THE STATE OF UTAH

TERRY MITCHELL
Plaintiff,

v.

RICHARD WARREN ROBERTS,
Defendant.

SUPPLEMENTAL BRIEF OF AMICI CURIAE JANE DOES 1 – 4 AND JOHN DOES 1 AND 2 IN SUPPORT OF AN AFFIRMATIVE ANSWER TO QUESTIONS CERTIFIED BY THE UNITED STATES DISTRICT COURT

On certified questions of law from the United States District Court for the District of Utah, Honorable Evelyn J. Furse, Case No. 2:16-cv-00843-EJF

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases **Pages**

Constitutional Provisions

Statutes

Other Authorities

Pursuant to this Court's order dated August 17, 2017, Jane Does 1 – 4 and John Does 1 & 2 respectfully submit this *amicus curiae* brief in support of Utah Code § 78B-2-308(7), which provides a path for adult survivors to seek justice against living individuals who perpetrated acts of sexual abuse against them as children.

Indeed, when House Bill 279 was signed into law in 2016, the stated purpose of this bill was to "provide a window for the revival of civil claims against perpetrators of sexual abuse of a child," and is highlighted as allowing "child sexual abuse victims to bring a civil action against an alleged perpetrator **even though the statute of limitations has run."**[1] House Bill 279 amended Utah Code Ann. § 78B-2-308[2] to read, in part, as follows:

> (1) The Legislature finds that:
> (a) child sexual abuse is a crime that hurts the most vulnerable in our society and destroys lives:
> (b) Research over the last 30 years has shown that it takes decades for children and adults to pull their lives back together and find the strength to face what happened to them;
> (c) …
> (e) in 1992, when the Legislature enacted the statute of limitations requiring victims to sue within four years of majority, society did not understand the long-lasting effects of abuse on the victim and that it takes decades for the healing necessary for a victim to seek redress; …

I. INTRODUCTION

This Court has requested additional briefing on the following question:

> Under the Utah Constitution, does the Utah Legislature have the power to revive a claim that was barred by the previously applicable statute of

[1] H.B. 279, 2016 Utah Laws Ch. 379 (emphasis added), a true and correct copy of which is submitted herewith as Exhibit A.

[2] Utah Code. § 78B-2-308 (2016), as amended by H.B. 279, 2016 Utah Laws Ch. 379 (emphasis added), a true and correct copy of which is submitted herewith as Exhibit B.

> limitations, and if so, what limitations, if any, does the Utah Constitution impose on that power?

Supplemental Briefing Order, p. 2 (July 10, 2019).

This Court has also asked the parties and *amici* to examine Article VI, Section 1; Article I, Section 7; and Article I, Section 11 of the Utah Constitution and address the applicable constitutional analysis that should be applied. *Id*.

Defendant Richard Roberts ("Roberts") has asked this Court to read a pre-Civil War common law doctrine, the doctrine of vested rights, into the Constitution of the State of Utah as an unwritten right, arguing that it is an absolute "black letter rule" beyond the grasp of the Legislative and Judicial branches of Utah's government. Roberts also contends that no constitutional test is to be applied to legislation reviving previously time-barred claims because the Legislature is absolutely without power to pass such legislation—meaning that the purported right to find refuge in a prior statute of limitations applicable to claims of child sexual abuse is afforded greater protections than any other rights, including "fundamental rights," to the protection of life, liberty, and property, regarding which well-articulated constitutional standards have been formulated and applied by the courts.

Plaintiff, on the other hand, points out that "vested" rights do not burden the Legislative branch's plenary power to enact legislation. Plaintiff has also pointed out that a statute reviving barred claims of child sexual abuse does not implicate fundamental rights and that such a statute clearly meets a rational basis standard of constitutional scrutiny. According to well-established rules of statutory construction, such a statute may be applied retroactively where: (1) it is procedural in nature; *or* (2) the Legislature has expressed its

intent that the statute is to be applied retroactively, even if it enlarges, diminishes, or eliminates "vested" or substantive rights.

Amici Curiae Jane Does 1 – 4, and John Does 1 and 2 point to a middle ground somewhere in between these two positions. While accepting that a limited notion of "vested" rights are a part of Utah's legal history, *Amici* asks this Court to contextualize these rights in their historical origin in the common law of contracts and real property as it existed prior to the ratification of the Utah Constitution. From this basis, *Amici* ask this Court, in keeping with the spirit and intentions of the Utah Constitution and the delegates that drafted it, to deny vested rights *absolute* constitutional protection, and to limit their application to their historical roots in real property and contracts.

As to the extent of the plenary powers with which the Utah Legislature was endowed by the Utah Constitution, *Amici* fully concur with Plaintiff as to the Utah Legislature's ability to enact retrospective legislation and to enact statutes reviving causes of action if such legislation passes muster under the applicable due process test. Where, as here, such legislation does not implicate fundamental rights, *Amici* concur with Plaintiff's assessment that a rational basis level of constitutional scrutiny is appropriate and that the revival statute at issue here easily passes such scrutiny.

II. ARGUMENT

1. THE LEGISLATIVE BRANCH WAS ENDOWED BY THE UTAH CONSTITUTION WITH PLENARY POWER, INCLUDING THE POWER TO REVIVE BARRED CLAIMS.

Constitutions are documents of limitation.[3] Finding their roots 804 years ago in the Magna Carta, the constitutions of the modern nation-states act as a check on the consequences of unbridled tyranny by a dictator or monarch by reserving political power in the people, distributing it to branches of government, and then placing limits on the acts each branch is capable of carrying out.[4]

Yet the purpose of constitutions is not to hamstring government, and thereby deprive it of the ability to run effectively, but rather to empower representatives of the people to make decisions for the good of the whole, subject to prescribed constitutional limits.[5] Utah's Constitution is no different. In Utah:

> All political power is inherent in the people; and all free governments are founded on their authority for their equal protection and benefit, and they have the right to alter or reform their government as the public welfare may require.

Utah Const. Art. I, § 2 (1895). The Legislative power is then "vested in a Senate and House of Representatives which shall be designated the Legislature of the State of Utah". Utah Const., Art. VI, § 1(a) (1895). This power is plenary, "excepting such as is expressly or

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[3] *See Generally* Colomer, Josep M., "Comparative Constitutions," in The Oxford Handbook of Political Science 176, 176 (Robert E. Goodin ed., 2009) (citations omitted) https://www.oxfordhandbooks.com/view/10.1093/oxfordhb/9780199604456.001.0001/oxfordhb-9780199604456-e-009.

[4] *Id.*

[5] *Id.*

impliedly withheld by the state or federal constitution . . . ." *Kimball v. City of Grantsville City*, 19 Utah 368, 57 P. 1, 4 (1899).[6]

Conversely, however, "in the absence of any *constitutional* restraint, express or implied, the legislature may act upon any subject within the sphere of the government." *Id.* at 5 (emphasis added). Where the legislature chooses to act, "[i]t is the sole judge as to whether an exigency or such cause exists as requires the enactment of the law, and, in the absence of any constitutional restriction, if it makes a law, there is no authority in the government which can declare it void." *Id.* If the legislature chooses on the basis of the public welfare to enact a statute reviving barred claims, and there is no constitutional basis for invalidating the statute, the statute must therefore be upheld.

A. There Is No Explicit Prohibition to the Revival of Barred Claims in the Utah Constitution, and the Exclusion of Such a Section Was Purposeful.

In 1895, when the Constitutional Convention for the formation of the State of Utah was convened, the courts in many[7] states prohibited their legislatures from reviving expired statutes of limitation. In a plurality of these states however, the prohibition had a basis in

[6] This brief does not consider the initiative and referendum right set forth in the 1900 amendment to Utah's Constitution. Utah Const. Art. VI, §§ 1(b) & 2 (1900).

[7] Roberts stated that the laws in 25 states held this way, but the precedent in New Jersey, Vermont, and West Virginia is contrary to what he stated it to be. *See Short v. Short*, 372 N.J.Super. 333, 338 (2004) (stating that revival of claims was not per se unconstitutional) (citing *Panzino v. Continental Can Co.*, 71 N.J. 298, 305, 364 A.2d 1043 (1976) (limiting vested rights to contracts and explicitly excluding them from statutes)); *Id.* (citing *D.J.L. v. Armour Pharmaceuticals Co.*, 307 N.J.Super. 61, 84, 704 A.2d 104 (1997) ("no vested right in continued existence of a statute or rule of common law")); *Lowry v. Keyes*, 14 Vt. 66, 29 S.W. 450 (1842); *Huffman v. Alderson's Adm'r*, 9 W. Va. 616, 630 (1876).

express constitutional provisions which Utah did *not* include in its Constitution, prohibiting either the revival of claims or the retroactive application of statutes of limitations in general.[8] Of the remaining states that prevented the revival of claim without an explicit constitutional basis prior to 1895[9], many later abrogated the doctrine altogether, or else severely curtailed its application to the realms of real property and contracts law.[10]

Delegates to the Utah constitutional convention were intimately familiar with the

[8] For examples of cases where revival of claims is impermissible on the basis of a constitutional prohibition on the revival of claims, *see Banks v. Speers*, 97 Ala. 560, 11 So. 841, 845 (1892); *Phenix Ins. Co. v. Pollard*, 63 Miss. 641, 644 (1886). For examples of cases where revival of claims is impermissible on the premise of a constitutional prohibition on the retroactive application of statutes, *see Willoughby v. George*, 5. Colo. 80, 82 (1879); *Woart v. Winnick*, 3 N.H. 473, 477 (1826); *Girdner v. Stephens*, 48 Tenn. 280, 286 (1870); *Mellinger v. City of Houston*, 68 Tex. 37, 3 S.W. 249, 254-55 (1887).

[9] *Bd. of Educ. of Normal School Dist. v. Blodgett*, 155 Ill. 441, 40 N.E. 1025, 1027 (1895); *Morrison v. Kendall*, 33 N.E. 370, 372 (Ind. 1893); *Thompson v. Read*, 41 Iowa 48, 50 (1875); *Bowman v. Cockrill*, 6 Kan. 311, 340 (1870); *Bigelow v. Bemis*, 84 Mass. 496, 497 (1861); *Coady v. Reins*, 1 Mont. 424, 428 (1872); *Baldro v. Tolmie*, 1 Or. 176, 177 (1855); *Stoddard v, Owings*, 42 S.C. 88, 20 S.E. 25, 26 (S.C. 1894); *Packscher v. Fuller*, 6 Wash. 534, 33 P. 875 (Wash. 1893).

[10] *See Harding v. K.C. Wall Products, Inc.*, 250 Kan. 655, 669, 831 P.2d 958, 968 (1992) (overruling *Bowman v. Cockrill*, *supra*, and giving right to revive actions); *Sliney v. Previte*, 473 Mass. 283, 294, 41 N.E.3d 732, 741 (2015); *Cosgriffe v. Cosgriffe*, 262 Mont. 175, 864 P.2d 776 ("The trial court incorrectly relied on *Coady v. Reins* (1872), 1 Mont. 424 [sic], for the proposition that the expiration of a statute of a limitations is a vested right . . . [s]o that there is no question on what *Johnson v. St. Patrick's Hosp.*, 148 Mont. 125, 417 P.2d 469 (1996)] held, we clarify the record and conclude that *Johnson* overruled the *Coady* decision."); *A.K.H. v. R.C.T.*, 312 Or. 497, 822 P.2d 135 (1991) (en banc) (declaring revival of actions constitutional (citing *Denny v. Bean*, 51 Or. 180, 186, 93 P. 693 (1908) (permitting the retroactive application of statutes of limitation); *Lane v. Dept of Labor and Industries*, 21 Wash. 2d 420, 425-26, 151 P.2d 440, 443 (1944) (en banc) (permitting application of the vested rights doctrine in contracts and real property, but explicitly declaring the doctrine of vested rights to have no constitutional basis, finding it inapplicable to statutes of limitations, and permitting the revival of barred actions).

constitutions of the other states and with the constitutional language necessary to prevent the revival of claims.[11] 1 OFFICIAL REPORT OF THE PROCEEDINGS AND DEBATES OF THE CONVENTION ASSEMBLED AT SALT LAKE CITY TO ADOPT A CONSTITUTION FOR THE STATE OF UTAH 253 (1898) (hereinafter "[1 or 2] Proceedings")[12]. Several state constitutions drafted both prior to and closely antecedent to the drafting of the Utah Constitution contain explicit sections prohibiting revival of time-barred claims, specifically, or retroactive legislation, generally. These provisions were often included with the section on the impairment of contracts or *ex post facto* laws.[13] Despite those other state constitutional provisions, the Utah delegates purposely declined to insert such language, expressing their intent to allow retrospective civil legislation if that is the expressed intent of the Legislature.[14]

The omissions must be presumed to have been purposeful. *See, e.g., Bandoni v. State*, 715 A.2d 580, 590 (R.I. 1998) (referring to "well-established rules" of constitutional

[11] Throughout the course of record of the debates, delegates made numerous and frequent references to the constitutions of other states and used their contents to inform their decisions as to the drafting of Utah's constitution. Jean Bickmore White, *So Bright the Dream: Economic Prosperity and the Utah Constitutional Convention*, 63-4 U. HIST. QUARTERLY 322 n.3 (Fall 1995).

[12] Both volumes of the proceedings may be accessed online in a searchable ebook format at https://catalog.hathitrust.org/Record/001156736. They are also available indexed by day at https://le.utah.gov/documents/conconv/utconstconv.htm

[13] For examples of constitutional provisions passed closely before and after the drafting of the Utah Constitution, *See* Ala. Const. of 1875, Art. IV, § 56 (1875) (prohibiting the revival of actions); Miss. Const. of 1890, Art. 4, § 97 (1890); Okla. Const. Art. 5, § 52 (1907) (prohibiting the revival of actions).

[14] 1 Proceedings at 323.

construction requiring that "[e]very clause of the constitution . . . be given its due force, meaning, and effect, and [that] no word or section can be assumed to have been . . . unnecessarily omitted." (citation omitted)); *Belnap v. Howard*, 2019 UT 9, ¶ 27, 437 P.3d 355 ("[W]e also seek 'to give effect to omissions in statutory language by *presuming all omissions to be purposeful*.'" (emphasis added) (citation omitted)); *State v. Casey*, 2002 UT 29, ¶ 20, 44 P.3d 756 (applying rule of statutory construction to constitutional construction); *Carrier v. Salt Lake Cnty*., 2004 UT 98, ¶ 30, 104 P.3d 1208 ("[W]e should give effect to any omission in [a statute's] language by presuming that the omission is purposeful."). *See also State v. Strom*, 2019 ND 9, ¶ 6, 921 N.W.2d 660 ("When interpreting a constitutional provision, 'we apply general principles of statutory construction.'" (citation omitted)); *City of Athens v. Testa*, 2019 Ohio 277, ¶ 43, 199 N.E. 3d 469 ("[I]n construing the Ohio Constitution, courts apply the same rules of construction that they apply in construing statutes." (citations omitted)).

B. The Delegates to the Utah Constitutional Convention Intended That the Utah Legislature Be Able to Enact Retrospective Legislation, Including Statutes Reviving Barred Causes of Action.

As to what exactly the intent of the delegates was regarding the revival of claims and empowering the Legislative branch to enact retrospective legislation in general, an examination of Article I, § 23 bears note. Inasmuch as the rest of Article I of the Utah Constitution is a declaration of the rights of individuals, the debate around the adoption of Section 23 of that article shows that said section should be seen as a right of the Legislature, despite its language preventing the legislature from passing any law "granting irrevocably any franchise, privilege or immunity." Utah Const., Art I., § 23 (1895).

Entwined with the debate around the language of § 23 are several references to "The Dartmouth Case." In *Dartmouth College v. Woodward*, 17 U.S. 518, 4 Wheat. 518, 4 L.Ed. 629 (1819), the United States Supreme Court held that where a sovereign entity grants a private entity a franchise, privilege or immunity irrevocably, such grant is a contract and said entity gains property rights in that franchise, privilege, or immunity. *Dartmouth*, 17 U.S. at 588, 590. Where such a grant is made, the Court reasoned, any retrospective act thereafter seeking to undo the prior such grant both deprived the entity of its property and impaired the contract it executed with the sovereign and was therefore unconstitutional. *Dartmouth*, 17 U.S. at 588, 595-96.

Mindful of this holding, the delegates to the Utah Constitutional Convention took painstaking efforts to ensure that such legislation "should still be within the powers of the Legislature to revoke." 1 Proceedings at 366. This provision, regarded by one delegate as "one of the most important things that can be put into the bill of rights," sought to guarantee that retrospective legislation should be made effective by ensuring that it did not conflict with any vested rights (by ensuring that no such rights should vest in the first place), or that if it should, it would be the original act which would be in violation of the Constitution as an irrevocable grant. 1 Proceedings at 365-67.[15]

[15] Where some delegates feared that this provision alone did not go far enough, the delegates also included a provision in the constitution preventing the legislature from granting "individuals, associations, or corporations any privilege, immunity or franchise." Utah Const. of 1895, Art. VI, § 26 c. 16 (1895); 2 Proceedings at 1467 ("I think, Mr. Chairman, that we should . . . put the corporation under the control of the State, and simply because you give them a corporate privilege – a franchise at one time, if they abuse that,

The wisdom exhibited by these early delegates is spotlighted by the reasons why Utah Code § 78B-2-308(7) was enacted. As stated above, the legislature found that "in 1992 when the Legislature enacted a statute of limitations requiring victims to sue within four years of majority, society did not understand the long-lasting effects of abuse … and that it takes decades of healing necessary for a victim to seek redress."

C. The Delegates to the Utah Constitutional Convention Intended Vested Rights to Be Construed Narrowly Where They Were to Be Applied at All.

The delegates offered contrasting views about the extent of constitutional protection that would be given to vested *property* rights, but all delegates understood "vested rights" to include only certain rights in contracts or in real property, including water rights.

Delegate Thomas Maloney stated that water rights that vested prior to the creation of the state could not be taken away by the state. 2 Proceedings at 1209 (Day 47, Apr. 19, 1895). Delegate Charles Stetson Varian[16] took a narrower view. Varian noted that the State is prohibited from taking "private property for private use," but argued the State was empowered to take property for the public good. 1 Proceedings at 339 (Day 22, Mar. 25, 1895).

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and if there is any necessity of recalling, restricting, and controlling that, I think the State should have the full power to do so . . . .").

[16] Charles Stetson Varian was a Utah attorney, present at the convention as part of the Salt Lake County contingent. Prior to his private practice, delegate Varian had served as the Speaker of the House of Representatives and as a U.S. Attorney for the State of Nevada and had also practiced as an Assistant U.S. Attorney for the Territory of Utah. Cresswell, Stephen Edward, *Mormons and Cowboys, Moonshiners and Klansmen: Federal Law Enforcement in the West & South, 1870-1893*, 105 (1991).

Varian reasoned (regarding eminent domain), where an action is "accorded in the name of the State upon the fears and assumption that the good of the entire community" it is "the supreme law, and the rights of individuals must yield in order that the rights of the whole may be benefitted." *Id*. In short, Mr. Varian was of the opinion that vested rights should remain inviolate as to the "disposition of property rights, except where the State is interested and concerned . . . ." *Id* at 340.[17]

Delegate Franklin Richards offered the following opposition to any broad application of inviolable "vested" rights:

> "[-But] [W]hat are vested rights? . . . The gentleman from Weber[18] . . . intimates that it would be a vested right to interfere in any way with the conducting of business as now organized. I am not so clear about that. It is true that if they had been incorporated under a law that did not permit amendment . . . in the laws creating them or regulating them, it might be so, it might be an interference with that which might otherwise be regarded as a contract; but the supreme court[sic] of the United States has held that Congress may interfere with charters that have been granted and may change them in this Territory, and if Congress may do that, why may not the State do it, as a State?

2 Proceedings at 1551.

Ultimately, the decision of the convention was to pass the issue of adjudicating vested rights such as water rights to the legislature. The fear of the convention was that if they should act in error, either to guarantee these rights or to deprive them in the

[17] Cf. Varian's objections to eminent domain for the necessity of private parties. 1 Proceedings at 339. Varian does not raise objection to the dispossession of property for "the benefit of the public" or "for the good of the community of the whole" but does object where it is merely "for the benefit of my neighbor."

[18] Referencing Delegate Thomas Maloney.

constitution, it would be very difficult to undo. 2 Proceedings at 1216 (Day 47, Apr. 19, 1895). In keeping with their stance on the revival of claims and retrospective legislation, the delegates elected not to bind the legislature unnecessarily, and did nothing.[19]

This discussion of vested rights has one key feature. Every reference to vested rights in the debates of the delegates was regarding either real property or contracts. While mention of vested rights was made in relation to contracts[20], water rights[21] (which have been consistently construed as real property rights), mining claims[22], real property[23], and the deprivation thereof[24], mention was never made of vested rights for any other purpose.

This is because essential to the understanding of the delegates in 1895 as to what a vested right in property was included the trait that it was a right that existed *ex ante* the foundation of the State of Utah. Edward S. Corwin, *Basic Doctrine of American Constitutional Law*, MICH L. REV. 247, 272, 275 (1913-1914) (citations omitted) (hereinafter "Corwin on Constitutional Law").Where these land claims, and water and mining rights stemmed from common law, and did not flow from the state, it was the

[19] Despite Delegate Maloney's spirited defense, the constitutional convention ultimately elected to leave the question of water rights to the legislature to decide. In adopting this stance, the delegates accepted that any declaration or legislation of water rights would likely interfere with vested rights, but nonetheless felt that this would be the most appropriate manner in which to proceed. *See* 2 Proceedings at 1213 (Day 47, Apr. 19, 1895).

[20] 2 Proceedings at 1550-51.

[21] 2 Proceedings at 1206-17, 1534.

[22] 2 Proceedings at 1530, 1534.

[23] 2 Proceedings at 1182.

[24] In relation to discussions of eminent domain. 1 Proceedings 339-340.

opinion of the delegates that the state had no right to take their real property from them. *Id.*

Even had the delegates understood vested rights to include land rights accruing after the formation of the state, however, they would not have counted statutes of limitations as being property in which a right could vest. The land claims and water rights which the delegates believed to be protected by vested rights existed in the lands that were later bounded to form the State of Utah long before its admission as a state, and in some cases, even before that land became part of the territory of the United States. Conversely, any right an individual might have claimed from a statute of limitations would have stemmed from Utah statutory law, rather than common law, and thus would stem from the state's authority. *Campbell v. Holt*, 115 U.S. 620, 628, 6 S.Ct. 209, 213, 29 L.Ed. 483 (1885) (citing *Tioga R. R. v. Blossburg & C. R. R.*, 87 U.S. 137, 20 Wall. 150, 22 L.Ed. 331 (1873))[25]. It would therefore be wholly within the state's power, read in conjunction with Art. 1, § 23, to take such a statutory right away. Corwin on Constitutional Law at 275.

As any right granted by statute would not have been acknowledged by the delegates to be a vested right, the expiration of a statute cannot cause one to vest in that right, and where the legislature then elects, in its power, to revive said claims, and to invade that right, no vested right is interfered upon, the constitution is not implicated, and the statute must therefore be upheld.

[25] The dissenting opinion in this case has been often cited by the Utah Supreme Court, but said opinion did not disagree on this point. *See* Campbell, 115 U.S. at 631, 6 S.Ct. at 215 (Bradley, J., dissenting).

D. The History of Legal Precedent Since the Utah Constitutional Convention Has Comported With the Delegates' Understanding of Vested Rights, With One Notable Exception, Which Was Made in Error.

In the decades since the drafting of the Constitution of the State of Utah, there has been much discussion of what vested rights are, and how and when they should be protected. Less than a year after the foundation of Utah, the case of *Kuhn* v. *Mount* landed before the Supreme Court of Utah. In *Kuhn*, the court discussed a contract claim on a promissory note being rebutted on grounds of the statute of limitations. 13 Utah 108, ___, 44 P. 1036, 1039 (1896). Ultimately, the *Kuhn* court held that the claim could proceed on the basis of a subsequent promise, demonstrating that the bar of a statute of limitations was not truly absolute, and it was possible for subsequent actions to allow the courts to hear such claims. *Id.*

A similar discussion arose four years later on another action for a promissory note in *Ireland v. Mackintosh*. In *Ireland*, this Court held that the after an "appellant's right of action on the note in question became barred" due to a statute of limitations, the respondent had acquired a "vested right, in this state, to plead that statute as a defense and bar to the action." *Ireland v. Mackintosh*, 22 Utah 296, 61 P. 901, 904 (1900).

Yet to apply the holding of *Ireland* in this oversimplified manner would itself misapprehend *Ireland*. The *Ireland* court reached its conclusion by adopting a two-part test. In the first part, the court examined whether "the legislature intended to revive causes of action which had before the passage of that act become barred." *Id.* Where it determined that the statute passed did not indicate any intent to apply the law retrospectively and there

was not "any provision showing a contrary design", it then construed the statute prospectively, and determined whether it affected any substantive or "vested" rights. *Id.*

The court then examined the nature of any rights impaired. Reasoning that the "laws which exist at the time and place of the making of a contract, and where it is to be performed, enter into and form a part of it" and that where a legal right in a contract cannot exist where "the law has taken away all power of enforcing its obligation by any remedy," the court held that the appellant had acquired a vested right under their contract to plead the prior statute as a bar[26] *Id* at 903-04.

Where the legislature did not "clearly and unequivocally" intend the statute to be applied retroactively, and its retroactive application would impair substantive rights, the *Ireland* court declined to apply it retroactively. *Id.* This decision did not attempt to construe vested rights beyond the scope of real property and contracts however, nor did it stand for the proposition that the legislature could not "repeal the statute in toto." *Id.*

The facts of *Kuhn* and *Ireland* are both easily distinguished from the matter at bar. In both *Kuhn* and *Ireland*, the claims involved were actions in contract arising prior to the ratification of the Utah Constitution.[27] In *Ireland*, where the legislature had not expressed a dispositive intent to revive a contract claim when it revised its statute of limitations for

[26] The court here also sought to distinguish that "limitations [on actions] derive their authority from statutes" and that at common law there was "fixed no time as to the bringing of actions." *Ireland* at 903. Where the claim accrued prior the formation of the state of Utah, reading the statute of limitations into the agreement would be to imply a term that impaired the contract, which would have been unconstitutional.

[27] Both *Kuhn* and *Ireland* arose from promissory notes signed in 1892, prior to the ratification of Utah's constitution. *See Ireland*, 61 P. at 901; *Kuhn*, 44 P. at 1037.

promissory notes, not only did the court not wish to uphold the statute but it couldn't. To do so would have been against the intentions of the drafters of Utah's constitution, and would have been unconstitutional as impairing the rights of a contract formed prior to the creation of the State of Utah.

In the century since *Ireland*, this Court has disposed of several other cases involving statutes of limitations, but few have dealt with retroactive application[28], and less than a handful have dealt with vested rights.[29] Of those decisions that have dealt with both topics, most are, in keeping with the original parameters of vested rights, in the areas of contracts and real property.[30]

The sole instance where a statute outside the areas of contracts and real property has been referred to as a "vested right" is in the case of *Roark v. Crabtree*. 893 P.2d 1058 (1995). Even in *Roark* however, the Court chose to apply the two-part *Ireland* test to determine whether to apply the statute retroactively. Here, the Court made clear that it had no issue with applying a statute of limitations retroactively, but that the legislative history

[28] *See In re Swan's Estate*, 95 Utah 408, 79 P.2d 999 (1938) (declining to apply a statute of limitations retroactively in an inheritance case where the bulks of the assets was real property, and the legislature had amended the statute of limitations from one to three years, but did not give any indication that they intended to apply the statute retroactively).

[29] *Greenhalgh v. Payson City*, 530 P.2d 799 (Utah 1975) (allowing a statute of limitations to apply retroactively, but not discussing vested rights).

[30] *See* generally *O'Donnell v. Parker*, 48 Utah 578, 160 P. 1192 (Utah 1916) (action on contract involving sale of goods); *In re Handley's Estate*, 15 Utah 212, 49 P. 829 (1897) (discussing vested rights in relation to a retrospective law probating real property).

of the statute made it clear that the legislature had not intended the statute to apply retrospectively. *Id*. at 1062.

In turn, the Court then sought to answer the question of whether the alteration of a statute of limitations was procedural, or whether it affected substantive or "vested" rights. In answering said question, the court misstated the holding of *Ireland*, and neglected the history of vested rights up to and during the Utah Constitutional Convention. With this unsteady foundation, the court then mischaracterized a number of holdings that court had made since, and used this interpretation of the law as a basis from which to adopt the view that "after a cause of action has become barred by the statute of limitations the defendant has a vested right to rely on that statute as a defense." *Roark*, 893 P.2d at 1063. In doing so, it misapplied the *Ireland* test, and mischaracterized vested rights as being somehow in primacy vis-à-vis the dispositive question of legislative intent.

Defendant notes that a similar principle has been utilized in criminal cases, such as *State v. Lusk*, 2001 UT 102, 37 P.3d 1103. In this case and similar cases however, the basis for the unconstitutionality of a revival of barred criminal claims is rooted in Utah's Constitution, in the provision prohibiting ex post facto laws.[31] This principle is inapplicable to the matter at bar, as was discussed *supra* at 5.

In 1876, the Supreme Court of West Virginia stated that a retrospective action:

> Though it might possibly be abused, yet the Constitution of the United States, and of this State, not having restrained the legislature from exercising such power, the court can not pronounce such acts unconstitutional. It is true, that

[31] Roberts' citation of *State v. Apotex Corp.*, 2012 UT 36, ¶ 67, 282 P.3d 66 is inapplicable on the same basis.

> the power to pass retrospective acts is always dangerous, and is always liable to great abuse. Some of the States have, by their constitutions, in view of these abuses, expressly prohibited the legislature from passing any retrospective law. But our State Constitution contains no such prohibition. The exercise of such power is, however, sometimes eminently just and conservative, and unless its exercise either impairs the obligation of contracts, or deprives a party of his life, liberty, or property, without due process of law, our courts cannot pronounce it unconstitutional. [32]

Huffman v. Alderson's Adm'r, 9 W. Va. 616, 630 (1876).[33] Where the records of the intent of the delegates, and the contemporary case law support the understanding that vested rights were only meant to apply to contracts and real property claims, this Court should not attempt to vitiate the efficient system that the Legislative and Judicial branches have orchestrated by attempting to legislate an outmoded extra-statutory right into the constitution, and use it as basis for invalidating a lawfully enacted statute.

E. As the Delegates Decided to Enable the Legislature to Enact Retrospective Legislation and Denied Vested Rights Absolute Constitutional Protections, and the Legal Precedent Has Not Overridden These Decisions, the Legislature's Plenary Powers Extend to the Passage of Statutes Reviving Barred Claims.

The delegates to the Utah Constitutional Convention had every opportunity to ban

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[32] Accord *Templeton v. Linn City.*, 22 Or. 313, 319, 29 P. 795, 797 (1892) (citing *Edwards v. Johnson*, 105 Ind. 594, 5 N.E. 716 (1886); *Bryson v. McCreary*, 102 Ind. 1, 1 N.E. 55) ("Under a constitutional provision in all respects similar to our own, it was held that there is no vested right in the law generally, nor in legal remedies, and it is competent for the legislature to make changes in these so long as they do not affect the obligation of contracts").

[33] In his Supplemental Brief, Roberts offered this case for just the exact opposite proposition, using it to make the statement that West Virginia prohibited the revival of actions. Roberts' Supp. Br. at 14 n. 10. As the Court can see from this quote, this is plainly not true. Roberts has used a number of the cases he has cited in a similar manner. For another example, *See Lowry*, at 5 n. 6, *supra*.

retroactive statutes and, specifically, the revival of claims, but chose not to do so. At the same time and after extensive debate, they chose not to grant vested rights absolute constitutional protection, instead choosing to construe the protections granted by such rights narrowly.

From these facts, and the early holdings of *Kuhn* and *Ireland*, the original public meaning of the Utah Constitution is clear: it was the intent of the delegates that the legislature be permitted to "perform any needed thing" while "circumscrib[ing] their powers in a way to prevent either extravagance or the misuse of legislative authority."[34] This remit extended to and included allowing the Utah Legislature the power to revive a claim that was barred by the previously applicable statute of limitations.

Where the records of the Utah Constitutional Convention demonstrate that the delegates would not have considered a statute reviving barred claims to exceed the powers of the legislature and to have not impeded vested rights as they were understood in 1895, such a statute should be upheld, subject to a determination that the applicable due process test is met (as will be discussed infra).

[34] Lambert, Hon. Richard G., *Preface to the Utah Constitution of 1895*. Richard G. Lambert was a delegate to the Utah Constitutional Convention as a member of the Salt Lake County contingent, and the editor of the record of proceedings. The preface he wrote was included with all copies printed of the proceedings and would have influenced the public understanding of the meaning of Utah's Constitution.

2. A STATUTE REVIVING A BARRED CLAIM IS CONSTITUTIONAL SO LONG AS IT DOES NOT IMPLICATE A FUNDAMENTAL RIGHT, IS RATIONALLY RELATED TO A LEGITIMATE GOVERNING PURPOSE, AND IS NOT ARBITRARY

A. The Open Courts Clause Guarantees Defendant an Opportunity to Present His Vested Rights Defense, But Does Not Guarantee That the Courts Must Give It Effect.

Contrary to Defendant's assertions, the passage of a statute reviving barred claims does not deny him his opportunity to plead defenses in court as provided for by the Open Courts Clause of the Utah State Constitution. Utah Const. Art. I, § 11 (1895). Utah's Open Courts Clause provides that:

> All courts shall be open, and every person, for an injury done to him in his person, property or reputation, shall have remedy by due course of law, which shall be administered without denial or unnecessary delay; and no person shall be barred from prosecuting or defending before any tribunal in this State, by himself or counsel, any civil cause to which he is a party.

Id.

The Open Courts Clause guarantees, at the very least, "that courts shall be open, affording a day in court to all parties." *Miller v. USAA Cas. Ins. Co.*, 2002 UT 6, ¶ 41, 44 P.3d 663, 67 (citing *Jenkins v. Percival*, 962 P.2d, 796, 799 (1998)). "At a minimum, a day in court means that each party shall be afforded the opportunity to present claims and defenses, and have them properly adjudicated on the merits according to the facts and the law." *Id.*, ¶ 42, 44 P.3d at 674–75.

With that said, the Open Courts Clause does not mean that the court needs to afford a particular defense weight or merit, any more than they would if Defendant stated that that he was not subject to the revival law because he was a "sovereign citizen." *See Jeffs v.*

Stubbs, 970 P.2d 1234, 1250 (Utah 1998) (The Open Courts Clause "may not guarantee any specific remedy"); *State v. Wilson,* 2001 UT App. 299, ¶ 1 (citing *State v. Stevens*, 718 P.2d 398, 399 (Utah 1986) (per curiam) (rejecting a "sovereign citizen" defense")).

B. The History of Western Law Demonstrates Unequivocally That a Defense Is Not a Cause of Action, and That It Should Not Be Treated as Such by the Open Courts Clause.

Defendant asks this Court to find that the Open Courts Clause "protects a litigant's right to rely on vested defenses as well as causes of action." (Roberts Suppl. Brief at 31). In support of this request, he argues that a defense is a legal right, and that as it and causes of action are both legal rights, where the Open Courts Clause protects causes of action, it must therefore protect defenses as well. Because this defense is protected, Roberts contends, the failure to give it effect and nullify Plaintiff's claim destroys his opportunity to be heard in court.

As we are considering the original public meaning of the Utah Constitution, it is important to therefore recall the legal maxim *"the proper meanings of words are to be observed"*[35] and to place the legal terms "cause of action" and "defense" in their historical context to discern their legal definition as the delegates would have understood them.

At the time of the Utah Constitutional Convention, the terms "action" and "defense" had two very different meanings. An action was a "proceeding in a court of justice by which one party prosecutes another" while a defense was simply "that which is put forward to defeat an action."[36] Going back further, to English Common Law, an action was a

[35] *proprietates verborum observandae sunt*

[36] *See* Black's Law Dictionary (1st ed. 1891): *Defense*: That which is offered and alleged

proceeding by which a wrong was righted[37] while a defense was a statement of opposition or denial.[38] At English Common law, defenses did not have remedies, because they were not injuries.[39] Even if we go back still further, to the origins of the tradition of western law, an *actio* (action) was a state-granted means by which someone received redress, while an *exceptio* (defense) was a means by which someone nullified an *actio*, but which was not actionable itself.[40]

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by the party proceeded against in an action or suit, as a reason in law or fact why the plaintiff should not recover or establish what he seeks; what is put forward to defeat an action. More properly what is sufficient when offered for this purpose. In either of these senses it may be either a denial, justification, or confession and avoidance of the facts averred as a ground of action, or an exception to their sufficiency in point of law. In a stricter sense, defense is used to denote the answer made by the defendant to the plaintiff's action, by demurrer or plea at law or answer in equity . . . old statutes and records, the term means denial or refusal.

Action: In practice; the legal and formal demand of one's right from another person or party made and insisted on in a court of justice. An action is an ordinary proceeding in a court of justice by which one party prosecutes another for the enforcement or protection of a right, the redress or prevention or a wrong, or the punishment of a public offense.

[37] *See* Blackstone's Commentaries on the Law of England, Vol. 2 pg. 1640 & 1886. https://books.google.com/books?id=R20aAAAAYAAJ&dq=intitle%3ACommentaries%20inauthor%3Ablackstone%20inauthor%3ACarey-Jones&lr&as_drrb_is=q&as_minm_is=0&as_miny_is&as_maxm_is=0&as_maxy_is&num=100&as_brr=0&pg=PR1#v=onepage&q&f=false More accurately, an action or suit was a means by which an injury (or wrong) was righted (or remedied).

[38] Blackstone, Defenses, 1886. According to Blackstone, at English Common Law a Defense was in its truest sense a statement of opposition or denial and not a justification, protection, or guard, as was popularly thought.

[39] *Id*.

[40] *See* Watson, Alan, ed. 1998. The Digest of Justinian (Incorporating Digest Books 1-15 of the Corpus Juris Civilis). Translated by Alan Watson. Vol. 1. 4 vols. Philadelphia, Pennsylvania: University of Pennsylvania Press. pp. 18-19, 22 http://nbls.soc.srcf.net/files/files/Civil%20II/Texts/Digest%20of%20Justinian,%20Volume%201%20(D.1-15).pdf. At Roman Civil Law, there were several types of *Actiones*, including *Actio Civilis* (the general Civil Action), *Actio Popularis*, *Actio in Rem* (real

Under this analysis, it is possible to see that the terms have two (though intertwined) completely different definitions, and that never in the history of American law, English Common Law, or even the tradition of western law going back to the Romans has a defense been defined as a cause of action, nor as a means of remedying an injury. The Open Courts Clause should be read to give meaning to the terms it utilizes and accordingly should not be read to vest a right in defenses.

C. The History of the United States and of Utah up to and Including the Utah Constitutional Convention Demonstrates That the Delegates' Understanding of the Due Process Clause Would Have Allowed Them to Deprive an Individual of Property.

As with the provision of the Utah Constitution dealing with the plenary powers of the legislative authority, and the provision regarding Open Courts, the Due Process Clause of Utah's Constitution (Utah Const. Art. I, § 7 (1895)) has its roots in the Magna Carta. Under the aegis of this clause, the state can deprive an individual of his property and deprive him of his liberty or life by imprisoning or executing him for violations of the law, but the state must follow the appropriate legal formalities in so doing. Due process simply prohibits it from doing so arbitrarily.

The ramifications of such a clause cannot be understated: In the age of absolutist monarchs, kings could and regularly did deprive their subjects of lives, liberties, and property, even after the drafting of the Magna Carta.[41] It was in this context, and the context

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property action), *Actio Arbitraria* (injunction), and *Actio Contraria* (Impleader). Each of these actions existed in sharp contrast to *Excepiones* (Defenses), which served to nullify an action, but which were not actionable themselves. For an example of a defenses in Roman law, see *Pactum* (Pacts, pg. 26).

[41] *See Generally* Duffy, Eamon. *The Stripping of the Altars: Traditional Religion in*

of the American Revolutionary War, that the language of the Due Process Clause found in the constitutions of the United States developed.

Long prior to the convening of the Utah Constitutional Convention, an average American would have been intimately familiar with the Due Process Clause of the United States Constitution, its contents, and its implications. Aside from the landmark decision in *Campbell v. Holt*, which held that the application of statutes to revival claims did not violate vested rights, the court issued several other decisions defining due process prior to the convention.

In *Davidson v. City of New Orleans*, the Supreme Court held that it was not possible to find that a party had been deprived of his property without due process of law when he had "by the laws of the State, a fair trial in a court of justice, according to the modes of proceeding applicable to such a case." 96 U.S. 97, 105, 24 L.Ed. 616 (1877).

That same year, the court also held that due process of law did not necessarily require a judicial proceeding for a statute which deprived an individual of property where it was possible to enjoin the operation of the law. *McMillen v. Anderson*, 95 U.S. 37, 41-42, 5 Otto 37 (1877). Together, these holdings stood for the proposition that what the Due

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England, 1400–1580. New Haven, Connecticut: Yale University Press (1992). One of the most famous such examples occurred during the reign of Henry VIII. Henry, desperate to fund his military campaigns asked the clergy of England to levy a tax on their lands on his behalf. When they refused, he instead disbanded the monasteries of the country, sold off their assets, and taxed their populaces himself. While Henry technically had the legal authority under English law to do so (as the nominal head of the Church of England), he carried these acts out without hearing or trial, and the prayers for relief from the clergy fell on deaf ears.

Process Clause required was that the effecting of laws "be lawfully done" and not carried out arbitrarily. *McMillen*, 95 U.S. at 41. Holding after holding came down to similar effect, firmly ensconcing this understanding in the minds of anyone who paid even the slightest attention to the actions of the Supreme Court.[42]

By the time it came to draft the Constitution of the State of Utah, the Due Process Clause was so widely known and understood that the delegates to the Constitutional Convention spent little time discussing the clause itself, spending more time on its construction with other provisions of the constitution instead. 2 Proceedings at 1064. This Court has acknowledged as much, noting that while the Utah Due Process Clause is not exactly the same as the United States Constitution's Due Process Clause (U.S. Const. amends. V & XIV), the two are "substantially similar" and "the decisions of the Supreme Court of the United States on the federal due process clauses are highly persuasive as to the application of that clause of our state Constitution." *Terra Utilities, Inc. v. Pub. Serv. Comm'n*, 575 P.2d 1029, 1033 (Utah 1978). Where the two clauses are so similar, it stands that the delegates understood their Due Process Clause to enable the State to take away property from individuals, so long as it did not take it away *arbitrarily*.

D. The Legal Precedent of the Due Process Clause and the Open Courts Clause Does Not Prevent the Legislature From Changing or Abrogating Legal Defenses.

In interpreting Art. 1, §§ 7 & 11, this Court has repeatedly reinforced that the Due

[42] For examples of other opinions reaffirming this view of the Due Process Clause, *See Munn v. People of State of Illinois*, 94 U.S. 113, 24 L.Ed. 77 (1876); *W. Union Tel. Co. v. Davenport*, 97 U.S. 372, 24 L.Ed. 1047 (1878); *Hurtado v. People of State of Cal.*, 110 U.S. 516, 4 S.Ct. 111, 28 L.Ed 232 (1884).

Process Clause does not act as an absolute ban on the taking of private property. It merely prevents the deprivation of a person's "interest in property *without any opportunity to be heard*. To do so constitutes taking of property without due process of law". *Celebrity Club Inc. v. Utah Liquor Control Comm'n*, 657 P.2d 1293, 1296 (Utah 1982) (quoting *Halling v. Industrial Commission of Utah*, 71 Utah 112, 125, 263 P. 78, 82 (1927) (emphasis added)).

Although Defendant has repeatedly sought recourse to the state of law as it *was*, this does not give him an inalienable right to his defense, and it does not allow him to prevent the legislature from changing the laws of the state to promote the general health, safety, and welfare of the public. As this court has previously held in the criminal context, a "Defendant does not have a vested right to a defense simply because it was previously available." *State v. Herrera*, 895 P.2d 359, 366 (1995) (citing State v. Padilla, 776 P.2d 1329, 1331 (Utah 1989)). "We hold that this policy decision, though limiting for defendants, does not violate their state due process rights." *Id*. at 367.

Similarly, the Open Courts Clause should not be read to prevent the legislature from limiting or even abrogating a defense. While it is true that "the purpose of the open courts clause was to impose some limitation on the legislature's great latitude in defining, changing, and modernizing the law," this Court has repeatedly held that "[n]owhere in this state's jurisprudence is it suggested that article I, section 11 flatly prohibits the legislature from altering or even abolishing certain rights which existed at common law." *Craftsman Builder's Supply, Inc. v. Butler Mfg. Co.*, 1999 UT 18, ¶ 15, 974 P.2d 1194, 1198; *Cruz v. Wright*, 765 P.2d 869, 871 (Utah 1988) (citing *Berry By and Through Berry v. Beech*

Aircraft Corp., 717 P.2d 670, 676 (1985) ("Article I, section 11 is not to be read as preserving every common law cause of action that may have existed prior to 1896")). This Court best expressed this principle in *DeBry v. Noble*:

> As Berry declared, "[N]either the due process nor the open courts provision constitutionalizes the common law or otherwise freezes the law governing private rights and remedies as of the time of statehood." Berry, 717 P.2d at 676 (citing *Masich v. United States Smelting, Refining & Mining Co.*, 113 Utah 101, 191 P.2d 612 (1948)).
>
> Likewise, the immunities that existed in 1896 and were viewed as exceptions to the protection of article I, section 11 have also been subject to change. Since 1896, several immunities and restrictions on legal remedies have been abolished, in some instances by the Legislature and in some instances by the Court.

889 P.2d 428, 436 (Utah 1995).

As it has repeatedly acknowledged, this Court must acknowledge that history marches on, and the law must attempt to keep pace. The Due Process Clause and the Open Courts Clause do not prevent the legislature from limiting or abrogating defenses, such as the one granted by the elapsing of a statute of limitations. A statute reviving barred claims is not invalid and should be upheld.

E. Consistent with the Meaning of the Due Process Clause, the Appropriate Level of Scrutiny to Apply to a Statute Reviving a Barred Cause of Action is the Rational-Basis Test

Plaintiff's reasoning in her Supplemental Brief is sound. The appropriate test to apply to a statute reviving a barred claim of child sexual abuse for purposes of analysis under the Due Process Clause is the rational basis standard of constitutional scrutiny. Under this test, the statute should be upheld so long as "it does not infringe on fundamental rights, it is rationally related to a legitimate state interest, and it is neither arbitrary nor

discriminatory." Plaintiff's Suppl. Br. at 28 (citing *State v. Angilau*, 2011 UT 3, ¶ 10, 245 P.3d 745; *State v. Candedo*, 2010 UT 32, ¶ 16, 232 P.3d 1008; *Tindley v. Salt Lake City Sch. Dist.*, 2005 UT 30, ¶ 29, 116 P.3d 295).

Where a statute reviving claims such as the one *sub judice* does not implicate fundamental rights, it must be upheld so long as it is rationally related to a legitimate state interest.

F. If the Court Applies the Protection of the Open Courts Clause to Defenses, a Statute Reviving Time Barred Claims Will Still be Upheld Where It Remedies a Social or Economic Evil and Is Not Arbitrary.

If the Court chooses to not follow the weight of case law and instead applies the protections of the Open Courts Clause to defenses, the appropriate standard to test the constitutionality of a revival statute is the *Berry* test. Under this a statute will be upheld as constitutional under the Open Courts Clause so long as it "provides an injured person an effective and reasonable alternative remedy by due course of law for vindication of his constitutional interest." *Craftsman*, 1999 UT 18, ¶ 15, 974 P.2d 1194, 1198 (citing *Berry*, 717 P.2d 670, 676 (1985)). When an alternative is not provided, a statute limiting or abrogating a remedy may still be justified where there is "a clear social or economic evil to be eliminated and the elimination of an existing legal remedy is not an arbitrary or unreasonable means for achieving the objective." *Id.*

In practical reality, revival statutes, by their very nature, rarely provide for an alternative remedy. For the purposes of determining the limitations the Utah Constitution imposes on the legislature's ability to revive claims, the *Berry* test may be best simplified by focusing on the second step of *Berry*, and upholding a revival statute where it (1)

remedies a clear social or economic evil[43]; and (2) is not an arbitrary or unreasonable means by which this remedy is effected.

III. CONCLUSION AND STATEMENT OF INTEREST

By reviving previously barred claims, the Utah revival statute relating to claims for child sexual abuse does not impede a fundamental right. It remedies a clear social and/or economic evil and it is not arbitrary or discriminatory. Therefore, combining the tests of the Due Process Clause and the Open Courts Clause, it is fully within the Legislative branch's plenary powers to enact.

Sexual perpetrators such as *Amici* Richard and Brenda Miles seek protection and cover from this antiquated doctrine of common law. Sexually abusing and raping children are acts that are so venal, so morally bankrupt and repugnant to civilized society that the Utah Legislature, upon learning new information not available in 1992, decided to revise the law to prevent it from shielding those who are alleged to have sexually victimized children. The Utah Legislature made the decision to protect the goodness and innocence of children by allowing adult survivors the opportunity to seek justice against living individual perpetrators. This allowed Amici, Jane Does 1 – 4 and John Does 1 & 2, to seek justice for the horrific crimes committed against them as children.

Contrary to the assertions by Amici, Richard and Brenda Miles, the allegations

[43] In determining whether a particular statute is designed to remedy a clear social or economic evil, courts have previously turned to the legislative findings of a statute. *See Craftsman*, 1999 UT 18 ¶ 17-18, 974 P.2d at 1199. (Finding that legislative findings were sufficient indication of a clear social evil).

against them are not traceable to Barbara Snow. Indeed, the allegations in the Complaint make it clear that the almost contemporaneous disclosure of the sexual abuse perpetrated by the Miles was made not to Barbara Snow but to the mother of the children who were victimized. Following this disclosure, these children were in treatment for many years with Dr. Paul L. Whitehead who verified that the sexual abuse occurred, and that Amici, Richard and Brenda Miles perpetrated the abuse.[44]

To further deflect from the issue at bar, Amici, Richard and Brenda Miles go off on a tangent about satanic ritual abuse (SRA). The complaint against them does not allege satanic ritual abuse. One can only wonder at the reasons for this departure. However, in response to this, and out of respect for the many survivors of sexual abuse, it must be noted that in 1990 Bishop Glenn L. Pace was commissioned by the Church of Jesus Christ of Latter-Day Saints to investigate. Bishop Pace interviewed sixty victims whom he believed; he documented his conclusions in a memo he wrote to the Strengthening Church Members Committee.[45]

In response to the sexual victimizers of children who seek cover and protection by gutting this new law, perhaps this Court said it best. In speaking to a statute of limitations in a criminal context, this court in *State v. Herrera* remarked:

> Defendants' reliance upon this history is misplaced. It is one thing to demonstrate that Utah has a unique background . . . it is quite another to conclude that state due process must comply with this background and that

[44] See Exhibit 5, Declaration of Paul L. Whitehead M.D. to Plaintiff's Complaint in *Jane Doe 1 v Miles,* Case No. 1:19-cv-00121-JPM (District of Utah), Docket No. 9, where Dr. Whitehead opines that Jane Doe 1, Jane Doe 2, Jane Doe 5, and John Doe 1 each "suffered from being sexually abused and assaulted in a group setting by numerous adults including Perpetrator, Richard Miles and Brenda Miles."

[45] See Exhibit B (Glenn L. Pace, Strengthening Church Members Committee of July 19, 1990) to Plaintiffs Memorandum in Opposition to Motion to Dismiss for Failure to State a Claim in *Jane Doe 1 v Miles,* Case No. 1:19-cv-00121-JPM (District of Utah), Docket No. 9-2.

> any legislation that abandons Utah's historical practices violates the constitution. The legislature is allowed to reform . . . it is not locked into the past. As the State explains in its brief, "[D]efendant [does not] have a vested right to a defense simply because it was previously available."

895 P.2d 359, 366 (Utah 1995) (upholding the abrogation of the insanity defense) (citing *State v. Padilla*, 776 P.2d 1329, 1331 (Utah 1989) (stating that a similar argument relying on outdated criminal law was frivolous)).

It is true that statutes of limitation "are designed to promote justice by preventing surprises that have been allowed to slumber" but where the science and the evidence concur in the falsity of the premise on which such a statute rests, justice will not lie where such a statute is upheld. *Becton Dickinson & Co., v. Reese*, 668 P.2d 1254, 1257 n.6 (Utah 1983) (quoting *Order of R.R. Telegraphers v. Ry. Express Agency, Inc.*, 321 U.S. 342, 348-49, 64 S.Ct. 582, 88 L.Ed. 788 (1944)). Where a statute that revives barred claims is fully within the legislature's power to grant, and is subject to the limitations laid out *supra*, it will pass constitutional muster and should therefore be UPHELD.

Respectfully submitted this 7th day of October, 2019

Respectfully,

JAMES, VERNON & WEEKS, P.A.

/s/ Craig K. Vernon
Craig K. Vernon
Attorney for Jane Does 1-4,
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Certificate of Service

I, Craig K. Vernon, certify that on October 7, 2019, an original of SUPPLEMENTAL BRIEF OF AMICI CURIAE JANE DOES 1 – 4 AND JOHN DOES 1 AND 2 IN SUPPORT OF AN AFFIRMATIVE ANSWER TO QUESTIONS CERTIFIED BY THE UNITED STATES DISTRICT COURT and eight bound copies were filed with the Clerk of the Utah Supreme Court. Each of the following was served by email and each law office representing Plaintiff or Defendant was served with two copies by U.S. mail, and each additional counsel was served with one copy by U.S. mail:

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ADDENDA

IN THE

SUPREME COURT OF THE STATE OF UTAH

TERRY MITCHELL,
Plaintiff,

v.

RICHARD WARREN ROBERTS,
Defendant.

Case No. 20170447

SUPPLEMENTAL BRIEFING ORDER

Magistrate Judge Evelyn J. Furse of the United States District Court for the District of Utah certified the following two questions to us regarding reviving time-barred claims:

1. Can the Utah Legislature expressly revive time-barred claims through a statute?

2. Specifically, does the language of Utah Code section 78B-2-308(7), expressly reviving claims for child sexual abuse that were barred by the previously applicable statute of limitations as of July 1, 2016, make unnecessary the analysis of whether the change enlarges or eliminates vested rights?

We have concluded that in order for us to fully answer this question, some focused supplemental briefing is necessary. We have never conducted an in-depth analysis under the Utah Constitution of a statute like Utah Code section 78B-2-308(7) that explicitly purports to eliminate certain accrued statute-of-limitations defenses. However, to meaningfully answer this question, we must address whether the Utah Constitution gives the legislature the power to revive time-barred claims and/or whether it limits or prohibits the legislature from reviving time-barred claims. Accordingly, we request supplemental briefing on the following question:

Under the Utah Constitution, does the Utah Legislature have the power to revive a claim that was barred by the previously applicable statute of limitations, and if so, what limitations, if any, does the Utah Constitution impose on that power?

Specifically, we ask that the parties examine the original public meaning of the Utah Constitution. This examination should include—but need not be limited to—an analysis of the grant of legislative power found in article VI, section 1 of the Utah Constitution; the due process clause found in article I, section 7 of the Utah Constitution; and the open courts provision found in article I, section 11 of the Utah Constitution. The analysis should also address what standard or constitutional analysis Utah courts should apply in assessing whether a specific legislative enactment that explicitly purports to revive time-barred claims comports with the Utah Constitution.

The parties must submit simultaneous briefs not to exceed thirty-five (35) pages within forty-five (45) days of the date of this Order. Reply briefs will not be permitted. Please contact the clerk of court within one week if you deem the time limit to be insufficient. We will consider one request for an extension of time. The briefs should comply with rule 27 of the Utah Rules of Appellate Procedure as to size, margins, typeface, and contents of cover, and with rule 26(b) as to the number of copies filed and served. They also may include a separate table of authorities limited to the citations provided by the supplemental analysis. Compliance with other formatting and content provisions of the appellate rules, including the binding and color cover requirements described by subparts (c) and (d) of rule 27, is not required for a supplemental brief.

FOR THE COURT on this

10th day of July, 2019:

Thomas R. Lee
Associate Chief Justice

CERTIFICATE OF SERVICE

I hereby certify that on July 11, 2019, a true and correct copy of the foregoing SUPPLEMENTAL BRIEFING ORDER was sent by electronic mail to be delivered to:

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By _____
Jeffrey Ricks
Appellate Court Coordinator

Case No. 20170447
Fed. Court No. 2:16-cv-00843-EJF

PREAMBLE.

Grateful to Almighty God for life and liberty, we, the people of Utah, in order to secure and perpetuate the principles of free government, do ordain and establish this

CONSTITUTION.

ARTICLE I.

DECLARATION OF RIGHTS.

SECTION 1. All men have the inherent and inalienable right to enjoy and defend their lives and liberties; to acquire, possess and protect property; to worship according to the dictates of their consciences; to assemble peaceably, protest against wrongs, and petition for redress of grievances; to communicate freely their thoughts and opinions, being responsible for the abuse of that right.

SEC. 2. All political power is inherent in the people; and all free governments are founded on their authority for their equal protection and benefit, and they have the right to alter or reform their government as the public welfare may require.

SEC. 3. The State of Utah is an inseparable part of the Federal Union, and the Constitution of the United States is the supreme law of the land.

SEC. 4. The rights of conscience shall never be infringed. The State shall make no law respecting an establishment of religion or prohibiting the free exercise thereof; no religious test shall be required as a qualification for any office of public trust or for any vote at any election; nor shall any person be incompetent as a witness or juror on account of religious belief or the absence thereof. There shall be no union of church and State, nor shall any church dominate the State or interfere with its

Article IV, Section 10 [Oath of office.]

All officers made elective or appointive by this Constitution or by the laws made in pursuance thereof, before entering upon the duties of their respective offices, shall take and subscribe the following oath or affirmation: "I do solemnly swear (or affirm) that I will support, obey, and defend the Constitution of the United States and the Constitution of the State of Utah, and that I will discharge the duties of my office with fidelity."

Article V
Distribution of Powers

Article V, Section 1 [Three departments of government.]

The powers of the government of the State of Utah shall be divided into three distinct departments, the Legislative, the Executive, and the Judicial; and no person charged with the exercise of powers properly belonging to one of these departments, shall exercise any functions appertaining to either of the others, except in the cases herein expressly directed or permitted.

Article VI
Legislative Department

Article VI, Section 1 [Power vested in Senate, House, and People.]

(1) The Legislative power of the State shall be vested in:

(a) a Senate and House of Representatives which shall be designated the Legislature of the State of Utah; and

(b) the people of the State of Utah as provided in Subsection (2).

(2)

(a)

(i) The legal voters of the State of Utah, in the numbers, under the conditions, in the manner, and within the time provided by statute, may:

(A) initiate any desired legislation and cause it to be submitted to the people for adoption upon a majority vote of those voting on the legislation, as provided by statute; or

(B) require any law passed by the Legislature, except those laws passed by a two-thirds vote of the members elected to each house of the Legislature, to be submitted to the voters of the State, as provided by statute, before the law may take effect.

(ii) Notwithstanding Subsection (2)(a)(i)(A), legislation initiated to allow, limit, or prohibit the taking of wildlife or the season for or method of taking wildlife shall be adopted upon approval of two-thirds of those voting.

(b) The legal voters of any county, city, or town, in the numbers, under the conditions, in the manner, and within the time provided by statute, may:

(i) initiate any desired legislation and cause it to be submitted to the people of the county, city, or town for adoption upon a majority vote of those voting on the legislation, as provided by statute; or

(ii) require any law or ordinance passed by the law making body of the county, city, or town to be submitted to the voters thereof, as provided by statute, before the law or ordinance may take effect.

Article VI, Section 2 [Time and location of annual general sessions -- Location of sessions convened by the Governor or Legislature -- Sessions convened by the Legislature.]

(1) Annual general sessions of the Legislature shall be held at the seat of government and shall begin on the fourth Monday in January.

(2) A session convened by the Governor under Article VII, Section 6 and a session convened by the Legislature under Subsection (3) shall be held at the seat of government, unless convening at the seat of government is not feasible due to epidemic, natural or human-caused disaster, enemy attack, or other public catastrophe.

(3)

(a) The President of the Senate and Speaker of the House of Representatives shall by joint proclamation convene the Legislature into session if a poll conducted by the President and Speaker of their respective houses indicates that two-thirds of all members elected to each house are in favor of convening the Legislature into session because in their opinion a persistent fiscal crisis, war, natural disaster, or emergency in the affairs of the State necessitates convening the Legislature into session.

(b) The joint proclamation issued by the President and Speaker shall specify the business for which the Legislature is to be convened, and the Legislature may not transact any business other than that specified in the joint proclamation, except that the Legislature may provide for the expenses of the session and other matters incidental to the session.

(c) The Legislature may not be convened into session under this Subsection (3) during the 30 calendar days immediately following the adjournment sine die of an annual general session of the Legislature.

(d) In a session convened under this Subsection (3), the cumulative amount of appropriations that the Legislature makes may not exceed an amount equal to 1% of the total amount appropriated by the Legislature for the immediately preceding completed fiscal year.

(e) Nothing in this Subsection (3) affects the Governor's authority to convene the Legislature under Article VII, Section 6.

Article VI, Section 3 [Election of House members -- Terms.]

(1) The members of the House of Representatives shall be chosen biennially on even-numbered years by the qualified voters of the respective representative districts, on the first Tuesday after the first Monday in November.

(2) Their term of office shall be two years from the first day of January next after their election.

Article VI, Section 4 [Election of Senators -- Terms.]

(1) The senators shall be chosen by the qualified voters of the respective senatorial districts, at the same times and places as members of the House of Representatives.

(2) Their term of office shall be four years from the first day of January next after their election.

(3) As nearly one-half as may be practicable shall be elected in each biennium as the Legislature shall determine by law with each apportionment.

functions. No public money or property shall be appropriated for or applied to any religious worship, exercise or instruction, or for the support of any ecclesiastical establishment. No property qualication shall be required of any person to vote, or hold office, except as provided in this Constitution.

SEC. 5. The privilege of the writ of *habeas corpus* shall not be suspended, unless, in case of rebellion or invasion, the public safety requires it.

SEC. 6. The people have the right to bear arms for their security and defense, but the Legislature may regulate the exercise of this right by law.

SEC. 7. No person shall be deprived of life, liberty or property, without due process of law.

SEC. 8. All prisoners shall be bailable by sufficient sureties, except for capital offenses when the proof is evident or the presumption strong.

SEC. 9. Excessive bail shall not be required; excessive fines shall not be imposed; nor shall cruel and unusual punishments be inflicted. Persons arrested or imprisoned shall not be treated with unnecessary rigor.

SEC. 10. In capital cases the right of trial by jury shall remain inviolate. In courts of general jurisdiction, except in capital cases, a jury shall consist of eight jurors. In courts of inferior jurisdiction a jury shall consist of four jurors. In criminal cases the verdict shall be unanimous. In civil cases three-fourths of the jurors may find a verdict. A jury in civil cases shall be waived unless demanded.

SEC. 11. All courts shall be open, and every person, for an injury done to him in his person, property or reputation, shall have remedy by due course of law, which shall be administered without denial or unnecessary delay; and no person shall be barred from prosecuting or defending before any tribunal in this State, by himself or counsel, any civil cause to which he is a party.

SEC. 12. In criminal prosecutions the accused shall have the right to appear and defend in person and by counsel, to demand the nature and cause of the accusation against him, to have a copy thereof, to testify in his own behalf, to be confronted by the witnesses against him, to have compulsory process to compel the attendance of witnesses in his own behalf, to

SEC. 19. Treason against the State shall consist only in levying war against it, or in adhering to its enemies or in giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act.

SEC. 20. The military shall be in strict subordination to the civil power, and no soldier in time of peace, shall be quartered in any house without the consent of the owner; nor in time of war except in a manner to be prescribed by law.

SEC. 21. Neither slavery nor involuntary servitude, except as a punishment for crime, whereof the party shall have been duly convicted, shall exist within this State.

SEC. 22. Private property shall not be taken or damaged for public use without just compensation.

SEC. 23. No law shall be passed granting irrevocably any franchise, privilege or immunity.

SEC. 24. All laws of a general nature shall have uniform operation.

SEC. 25. This enumeration of rights shall not be construed to impair or deny others retained by the people.

SEC. 26. The provisions of this Constitution are mandatory and prohibitory, unles by express words they are declared to be otherwise.

SEC. 27. Frequent recurrence to fundamental principles is essential to the security of individual rights and the perpetuity of free government.

ARTICLE II.

STATE BOUNDARIES.

SECTION 1. The boundaries of the State of Utah shall be as follows:

Beginning at a point formed by the intersection of the thirty-second degree of longitude west from Washington, with the thirty-seventh degree of north latitude; thence due west along said thirty-seventh degree of north latitude to the intersection of the same with the thirty-seventh degree of longitude west from Washington; thence due north along said thirty-

ARTICLE VI.

LEGISLATIVE DEPARTMENT.

SECTION 1. The Legislative power of this State shall be vested in a Senate and House of Representatives, which shall be designated The Legislature of the State of Utah.

SEC. 2. Regular sessions of the Legislature shall be held biennially at the seat of the government; and except the first session thereof shall commence on the second Monday in January next after the election of members of the House of Representatives.

SEC. 3. The members of the House of Representatives, after the first election, shall be chosen by the qualified electors of the respective representative districts, on the first Tuesday after the first Monday in November, 1896, and biennially thereafter. Their term of office shall be two years, from the first day of January next after their election.

SEC. 4. The senators shall be chosen by the qualified electors of the respective senatorial districts, at the same times and places as members of the House of Representatives, and their term of office shall be four years from the first day of January next after their election: *Provided*, That the senators elected in 1896 shall be divided by lot into two classes as nearly equal as may be; seats of senators of the first class shall be vacated at the expiration of two years, those of the second class at the expiration of four years; so that one-half, as near as possible, shall be chosen biennially thereafter. In case of increase in the number of senators, they shall be annexed by lot to one or the other of the two classes, so as to keep them as nearly equal as practicable.

SEC. 5. No person shall be eligible to the office of senator or representative, who is not a citizen of the United States, twenty-five years of age, a qualified voter in the district from which he is chosen, a resident for three years of the State, and for one year of the district from which he is elected.

SEC. 6. No person holding any public office of profit or trust under authority of the United States, or of this State, shall be a member of the Legislature: *Provided*, That appointments in the State militia, and the offices of notary public,

law shall be revised or amended by reference to its title only; but the act as revised, or section as amended, shall be re-enacted and published at length.

SEC. 23. Except general appropriation bills, and bills for the codification and general revision of laws, no bill shall be passed containing more than one subject, which shall be clearly expressed in its title.

SEC. 24. The presiding officer of each house, in the presence of the house over which he presides, shall sign all bills and joint resolutions passed by the Legislature, after their titles have been publicly read immediately before signing, and the fact of such signing shall be entered upon the journal.

SEC. 25. All acts shall be officially published, and no act shall take effect until so published, nor until sixty days after the adjournment of the session at which it passed, unless the Legislature by vote of two-thirds of all the members elected to each house, shall otherwise direct.

SEC. 26. The Legislature is prohibited from enacting any private or special laws in the following cases:

First.—Granting divorce.

Second.—Changing the names of persons or places, or constituting one person the heir at law of another.

Third.—Locating or changing county seats.

Fourth.—Regulating the jurisdiction and duties of justices of the peace.

Fifth.—Punishing crimes and misdemeanors.

Sixth.—Regulating the practice of courts of justice.

Seventh.—Providing for a change of venue in civil or criminal actions.

Eighth.—Assessing and collecting taxes.

Ninth.—Regulating the interest on money.

Tenth.—Changing the law of descent or succession.

Eleventh.—Regulating county and township affairs.

Twelfth.—Incorporating cities, towns or villages; changing or amending the charter of any city, town or village; laying out, opening, vacating or altering town plats, highways, streets, wards, alleys or public grounds.

Thirteenth.—Providing for sale or mortgage of real estate belonging to minors or others under disability.

Fourteenth.—Authorizing persons to keep ferries across streams within the State.

Fifteenth.—Remitting fines, penalties or forfeitures.

Sixteenth.—Granting to an individual, association or corporation any privilege, immunity or franchise.

Seventeenth.—Providing for the management of common schools.

Eighteenth.—Creating, increasing or decreasing fees, percentages or allowances of public officers during the term for which said officers are elected or appointed.

The Legislature may repeal any existing special law relating to the foregoing subdivisions.

In all cases where a general law can be applicable, no special law shall be enacted.

Nothing in this section shall be construed to deny or restrict the power of the Legislature to establish and regulate the compensation and fees of county and township officers; to establish and regulate the rates of freight, passage, toll and charges of railroads, toll roads, ditch, flume and tunnel companies, incorporated under the laws of the State or doing business therein.

SEC. 27. The Legislature shall have no power to release or extinguish, in whole or in part, the indebtedness, liability or obligation of any corporation or person to the State, or to any municipal corporation therein.

SEC. 28. The Legislature shall not authorize any game of chance, lottery or gift enterprise under any pretense or for any purpose.

SEC. 29. The Legislature shall not delegate to any special commission, private corporation or association, any power to make, supervise or interfere with any municipal improvement, money, property or effects, whether held in trust or otherwise, to levy taxes, to select a capitol site, or to perform any municipal functions.

SEC. 30. The Legislature shall have no power to grant, or authorize any county or municipal authority to grant, any extra compensation, fee or allowance to any public officer, agent, servant or contractor, after service has been rendered or a contract has been entered into and performed in whole or in part, nor pay or authorize the payment of any claim hereafter created

Compliments of

HON. RICHARD G. LAMBERT.

LAMBERT PAPER CO:,
23 WEST FIRST SOUTH STREET,
SALT LAKE CITY.

To the People of Utah:

The Convention assembled to frame a Constitution for the proposed State of Utah, after two months of earnest effort, present the result of their labors for the consideration of the people of this Territory.

The ruling thought that actuated the Convention, from opening to close, was that under the direction and mandates of the Enabling Act, a Constitution must be framed that would secure to the people of Utah a wise, just and economical State government.

In this we believe we have succeeded, and we confidently submit to our fellow citizens the fruit of our deliberations, knowing that they will bear in mind the impossibility of our presenting any instrument that would not contain imperfections, inasmuch as the more than one hundred delegates who constructed it came together understanding little of each other, all more or less influenced by local ideas, and by impressions which the peculiar situation of this Territory for years past could not help but create and intensify. Nevertheless, it has been gratifying to note that there has been less partisan feeling and more unselfish unanimity of sentiment in this Convention than in any other political body of like character.

The inspiration behind the Declaration of Rights came from the great parent Bill of Rights framed by the Fathers of our country.

The article on the proposed Educational System has absorbed the best thoughts and efforts of the Convention, and draws around the Public Schools such protection and defense as will secure for them, it is believed, the steady upward progress which is the enthusiastic desire of this people.

The Legislative Article, while permitting future law-makers to perform any needed thing, circumscribes their powers in a

mlf

way to prevent either extravagance or the misuse of legislative authority.

The Executive Article defines clearly the prerogatives and powers of the several State officers, places all necessary authority in the hands of the Executive, and at the same time supplies all needed checks to prevent usurpation of power.

The Judiciary Article makes possible the conducting of the courts effectively by competent judges. It seeks to exalt the judiciary, and yet brings the system within a reasonable expenditure of the people's money. The Probate System has been abolished, but power is given the Legislature to restore it, if deemed necessary, or to adopt any other plan that may be wise or expedient.

The salaries of all officials have been marked down close to the danger line of extravagant economy.

We have provided to give equal suffrage to women.

We have inhibited for all time polygamous or plural marriages.

We have placed within safe limits the maximum of future taxation.

We have guarded against the possibility of any future great indebtedness of the State.

We have provided for the full development of our manifold industries, in such a way that in their expansion they will not feel any harsh friction from unjust laws.

We have provided for the correction of possible defects in the Constitution, either by amendments or by the enactment of statutes.

We have guaranteed perfect liberty of speech, freedom to the press, and absolute freedom of conscience.

We recommend our work to the gracious and generous consideration of the men and women of Utah, believing they will esteem it a fitting foundation on which to rear the structure of a glorified State.

If with Statehood there will be a slight increase in taxes, the compensating advantages will cause the increased expense to be forgotten. We will be able to utilize the magnificent gift of over seven millions of acres of land from our generous government; we will be able to secure capital for our mines; under the shield of Statehood thousands of people will seek homes in

Certificate of Service

I, Craig K. Vernon, certify that on October 7, 2019, an original of SUPPLEMENTAL BRIEF OF AMICI CURIAE JANE DOES 1 – 4 AND JOHN DOES 1 AND 2 IN SUPPORT OF AN AFFIRMATIVE ANSWER TO QUESTIONS CERTIFIED BY THE UNITED STATES DISTRICT COURT and eight bound copies were filed with the Clerk of the Utah Supreme Court. Each of the following was served by email and each law office representing Plaintiff or Defendant was served with two copies by U.S. mail, and each additional counsel was served with one copy by U.S. mail:

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Certificate of Compliance with Rule Utah Rule of Appellate Procedure 24(a)(11)

Certificate of Compliance with Page or Word Limitation, Typeface Requirements, and Addendum Requirements

1. This brief complies with the type-volume limitation of Utah R. App. P. 24(g)(1) because:

   [X] this brief contains 31 [number of] pages, excluding the parts of the brief exempted by Utah R. App. P. 24(g)(2), or

   [ ] this brief contains _____ [number of] words, excluding the parts of the brief exempted by Utah R. App. P. 24(g)(2). This brief has been prepared using _____ [name and version of word processing program].

2. This brief complies with the addendum requirements of Utah R. App. P. 24(a)(12) because the addendum contains a copy of:

   [X] any constitutional provision, statute, rule, or regulation of central importance cited in the brief but not reproduced verbatim in the brief;

   [X] the order, judgment, opinion, or decision under review and any related minute entries, findings of fact, and conclusions of law; and

   [ ] materials in the record that are the subject of the dispute and that are of central importance to the determination of the issues presented for review, such as challenged jury instructions, transcript pages, insurance policies, leases, search warrants, or real estate purchase contracts.

3. This brief complies with rule 21(g).

   Filings containing other than public information and records. If a filing, including an addendum, contains non-public information, the filer must also file a version with all such information removed. Non-public information means information classified as private, controlled, protected, safeguarded, sealed, juvenile court legal, or juvenile court social, or any other information to which the right of public access is restricted by statute, rule, order, or case law.

Craig K. Vernon

Attorney's or Party's Name

10/07/2019

Date